

# BROWN & JONES REPORTING, INC.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

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TRACY L. WINK,

Plaintiff,

- vs -

Case No. 14-367

MILLER COMPRESSING COMPANY,

Defendant.

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Examination of TRACY L. WINK, taken at the instance of the Defendant, under and pursuant to the Federal Rules of Civil Procedure, before KARA D. SHAWHAN, a Certified Realtime Reporter, Registered Merit Reporter and Notary Public in and for the State of Wisconsin, at Brown & Jones Reporting, Inc., 735 North Water Street, Milwaukee, Wisconsin, on November 21, 2014, commencing at 10:26 a.m. and concluding at 12:41 p.m.

## 1                   A P P E A R A N C E S

2       ALAN C. OLSON & ASSOCIATES, S.C., by  
3       MR. ALAN C. OLSON,  
3       2880 South Moorland Road,  
3       New Berlin, Wisconsin 53151-3744,  
4       appeared on behalf of the Plaintiff.

5       THOMSON COBURN, LLP, by  
6       MS. SUSAN LORENC,  
6       55 East Monroe Street, 37th Floor,  
7       Chicago, Illinois 60603,  
7       appeared on behalf of the Defendant.

## 8                   A L S O    P R E S E N T

9       Ms. Sarah K. Barbian

11                   \* \* \* \* \*  
12                   I N D E X

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23                   \* \* \* \* \*

24

25

## TRANSCRIPT OF PROCEEDINGS

TRACY L. WINK, called as a witness

herein, having been first duly sworn on oath, was examined and testified as follows:

(Exhibit Nos. 1 through 3 were marked.)

## **EXAMINATION**

BY MS. LORENC:

Q Good morning, Tracy.

A Good morning.

10 Q As I mentioned a second ago, my name is Susan  
11 Lorenc. I represent Miller. I'm going to be  
12 taking your deposition today. Could you state your  
13 name for the record, please?

14 A Tracy Lynn Wink.

15 Q And have you ever given a deposition before, Tracy?  
16 Do you mind if I call you Tracy?

17 A That's fine.

18 Q Okay.

19 A No, I have not.

20 Q Okay. So let me just kind of go through some of  
21 the ground rules. As you see, we have a court  
22 reporter here today that's going to be taking down  
23 everything that is said. She has a difficult time  
24 getting two conversations at once, so if you would  
25 let me ask my question before you answer it even

1           though there could be instances where you know  
2           exactly where I'm going, and conversationally want  
3           to jump in. If you could let me finish my  
4           question, and I do my best to do the same -- give  
5           you an opportunity to finish your answer before I  
6           ask the next question.

7           Because we're having all of this  
8           transcribed, she can't take down nods, gestures,  
9           "uh-huhs," things like that. So if you don't mind  
10          giving an audible response to all the questions,  
11          I'd appreciate it. This is not a marathon or a  
12          test, so if, at any point, you feel you need a  
13          break, just let me know. I would just ask that we  
14          finish the question that's been asked before taking  
15          a break, but otherwise I'd be happy to accommodate  
16          that.

17          If, at any point in time, you don't  
18          understand what I'm asking, please let me know and  
19          I'll rephrase it. Otherwise I'll assume that  
20          you've understood or heard what I've asked. Do you  
21          have any questions before we get started?

22          A      No.

23          Q      Okay.

24          MR. OLSON: I have just one housekeeping  
25          matter. We found a typo in Plaintiff's Response to

1                   the Defendant's Request for Admission No. 38, so we  
2                   fixed that this morning, and I want to give it to  
3                   you before the depo so there's no question about  
4                   that. It just deletes out where it's probably  
5                   apparent from the content that -- The word deleted  
6                   was "not" from the original.

7                   MS. LORENC: Okay. So Request to  
8                   Admit 38, just for the record, reads, "During the  
9                   July 13 meeting, Barbian and/or Chavez explained  
10                  that Miller would no longer be able to offer the  
11                  flexible hours because Miller Compressing was under  
12                  significant financial strain, or words to that  
13                  effect," and the response was "Deny. Ms. Barbian  
14                  did not bring up Miller's financial strain." Is  
15                  that the "not" you're referring to?

16                  MR. OLSON: It's the second "not" further  
17                  down.

18                  MS. LORENC: Okay. "She stated that  
19                  Ms. Wink needed to be in the office every day,  
20                  Monday through Friday, and that Ms. Wink's hours  
21                  were not going to have to be 8 a.m. to 4 p.m."

22                  MR. OLSON: That's the one. Right.

23                  MS. LORENC: Okay. So you want it to  
24                  read that "Ms. Wink's hours were going to have to  
25                  be 8 a.m. to 4 p.m."?

1 MR. OLSON: Right.

2 MS. LORENC: Okay. Thank you.

3 MR. OLSON: Um-hum.

4 BY MS. LORENC:

5 Q Okay. Ms. Wink, have you ever filed a lawsuit  
6 before?

7 A No.

8 Q Have you ever been a defendant in a lawsuit before?  
9 Have you ever been sued?

10 A No.

11 Q Prior to working at Miller Compressing, where did  
12 you work? We can start from high school and go  
13 forward.

14 A I worked at -- I was a clerk at an insurance  
15 company, Prudential Insurance Company. I'm sorry.  
16 This is a long time ago.

17 Q That's all right. What years were you at  
18 Prudential?

19 A 1996, maybe, to 1997.

20 Q Did you graduate from high school in 1996?

21 A '95.

22 Q Okay. And why did you leave Prudential in or  
23 around 1997?

24 A I took a different position at a company called  
25 Mitter Accounting.

1 Q Did you voluntarily leave Prudential?

2 A Yes.

3 Q You resigned from Prudential?

4 A Yes.

5 Q Okay. And Midyear, did you say the next company  
6 was?

7 A Mitter, M-i-t-t-e-r.

8 Q Okay. And what did you do at Mitter?

9 A Accounting. Accounts payable.

10 Q How long were you at Mitter?

11 A I believe a few months. I wasn't there long.

12 Q And why did you leave Mitter?

13 A To pursue a different job, making more money.

14 Q Did you quit?

15 A Yes.

16 Q Where did you go after Mitter?

17 A Meyer's Family Restaurant.

18 Q What did you do at Meyer's Family Restaurant?

19 A I cleaned.

20 Q How long were you there?

21 A Years. I don't recall how many years I was there.  
I worked there up until I started at Miller in '99  
then. I was there for a couple years.

22 Q So if I'm doing the chronology correctly, you think  
23 you might have worked at Prudential from about '96

1           to '97?

2   A   Right.

3   Q   Then you were at Mitter for --

4   A   Just a couple months.

5   Q   -- a couple months?

6   A   And then --

7   Q   And then, according to my records, you were hired  
8           by Miller in 1999?

9   A   Right. So I probably worked at Meyer's for like  
10           two years, maybe, maybe a little bit more.

11   Q   So maybe from '97 to '99?

12   A   Yeah -- Yes.

13   Q   And why did you leave Meyer's?

14   A   I had back injuries. I couldn't do the physical  
15           labor anymore.

16   Q   Did you quit working at Meyer's or were you  
17           terminated?

18   A   I quit.

19   Q   And after Meyer's, did you go to Miller  
20           Compressing?

21   A   Yes.

22   Q   Did you ever file any sort of employment-related  
23           charges against Prudential?

24   A   No.

25   Q   Did you ever file any employment-related charges

1                   against Mitter?

2   A   No.

3   Q   And what about at Meyer's? Did you file any  
4                   employment-related charges or claims?

5   A   No.

6   Q   Did you file a workers' comp claim against Meyer's?

7   A   No.

8   Q   Other than those three companies, did you work  
9                   anyplace after high school prior to going to Miller  
10                  Compressing?

11   A   Yes. There was a -- There was another one in  
12                  there. I don't recall the year, though -- if it  
13                  was directly after high school and before  
14                  Prudential or it was after Prudential. I worked at  
15                  a vet as an animal care technician.

16   Q   And did you quit working for the vet or were you  
17                  terminated?

18   A   I quit working there.

19   Q   Subsequent to leaving Prudential, did you file any  
20                  unemployment claim against Prudential?

21   A   No.

22   Q   Because you immediately started working at Mitter  
23                  or was there some other reason?

24   A   I believe I immediately started working.

25   Q   Okay. And after quitting Mitter, did you file an

1                   unemployment claim?

2   A   No.

3   Q   And is that because you immediately started working  
4                   at Meyer's?

5   A   Yes.

6   Q   And following your resignation from Meyer's, did  
7                   you file an unemployment claim?

8   A   No.

9   Q   Prior to leaving Miller Compressing, had you ever  
10                  filed an unemployment claim?

11   A   No.

12   Q   So as I've already said, according to our records,  
13                  you were hired by Miller Compressing in November  
14                  1999. Does that sound correct?

15   A   Yes.

16   Q   What were your work hours when you were hired by  
17                  Miller Compressing in November of 1999?

18   A   8 to 4.

19   Q   And what -- That changed at some point. Correct?

20   A   Yes.

21   Q   Tell me about that. Why did your hours change and  
22                  when?

23   A   My hours changed when my eldest son started  
24                  kindergarten.

25   Q   What year was that? Do you recall?

1 A 2007-2008.

2 Q Okay.

3 A Kindergarten year.

4 Q Okay. And why did they change?

5 A So I could pick him up from school.

6 Q You requested the change?

7 A Yes.

8 Q And what did they change to?

9 A 7 to 3.

10 Q Who did you make that change-in-hours request to?

11 A My team leader.

12 Q Who was that?

13 A In 2007? I don't recall if it would have been  
14 Margo at that time. We had several supervisor  
15 changes. I believe it would have been Margo back  
16 then.

17 Q Okay. I want to show you what I've previously had  
18 marked Wink Exhibit 1, and I have a copy that I can  
19 show your attorney as well. Here's the marked  
20 copy. If you want to review this e-mail before I  
21 ask you questions about it.

22 A Okay.

23 Q Okay. So we've marked as Exhibit 1 an e-mail  
24 between you and Sarah Kay dated May 18, 2010.  
25 Correct?

1 A Yes.

2 Q Who is Sarah Kay?

3 A Sarah Barbian.

4 Q Formerly known as Sarah Kay? And what was Sarah's  
5 role in 2010, when you were e-mailing with her?

6 A HR.

7 Q Okay. I want to focus your attention to that first  
8 paragraph of your e-mail to her that starts with  
9 "Thanks for the follow-up." Do you see where I'm  
10 looking? That last sentence of the first  
11 paragraph, "I work 7 to 3 during the school year  
12 and closer to 8 to 4 during summer break." Do you  
13 see that part?

14 A Yes.

15 Q So when -- At the time that you wrote this in May  
16 2010, and based on your earlier testimony, is it  
17 correct to say that you've been working this 7-3  
18 schedule for about three years?

19 A Two to three years, yes.

20 Q Okay. And that when your child wasn't in school,  
21 you were able to go back to the 8-to-4 hours.  
22 Correct?

23 A Yes.

24 Q Okay. Did you go back to the 8 to 4 during summer  
25 break because those were the normal business hours

1 at Miller Compressing?

2 MR. OLSON: Object to form. You can  
3 answer.

4 THE WITNESS: If they needed me to, yes.

5 BY MS. LORENC:

6 Q And did they need you to in 2010 -- to go back to 8  
7 to 4 during the summer?

8 A No. No. It was never really a problem for me to  
9 work 7 to 3. There were plenty of people coming  
10 and going at various hours.

11 Q Did you volunteer to go back to 8 to 4 during  
12 summer break?

13 A I -- Yes. I told them I could if they needed me  
14 to.

15 Q Because you understood that's what you had been  
16 hired in to do, correct, in 1999?

17 MR. OLSON: Object to form.

18 BY MS. LORENC:

19 Q You understood that when you were hired in 1999,  
20 your work hours were from 8 to 4. Correct?

21 A Yes.

22 Q And that at your own request in 2007, your hours  
23 were altered to 7 to 3. Correct?

24 A Yes.

25 Q What was your job when you were hired in November

1           of 1999?

2   A   I was hired in the order processing department for  
3           -- At the time it was called the scale payables  
4           desk.

5   Q   And what were your job responsibilities in order  
6           processing?

7   A   I would process scale tickets, weight tickets for  
8           scrap metal, pay for the scrap metal and pay  
9           freight charges for hauling that scrap metal, and  
10           other miscellaneous duties included filing,  
11           matching up check stubs to the -- or ticket stubs  
12           to the checks.

13   Q   Did you interface with customers?

14   A   Sometimes.

15   Q   And at some point in time from November of 1999,  
16           when you were hired, to December -- or excuse me --  
17           to 2012, when you left Miller, did your role change  
18           at the company?

19   A   Yes. Several times.

20   Q   Okay. What was your first job change from when you  
21           were hired?

22   A   From the scale payables desk, I moved on to the  
23           trip ticket desk.

24   Q   When was that?

25   A   I don't recall.

1 Q Do you have an approximation how many years or  
2 months after you were hired?

3 A I think it was just -- I think it was just maybe  
4 several months after I started.

5 Q Okay. So maybe early 2000, somewhere around there?

6 A Yes.

7 Q And what were your job responsibilities at the trip  
8 ticket desk?

9 A Processing Miller-hauled scrap load tickets and  
10 paying for those loads to -- paying the industrial  
11 accounts for those loads and calculating Miller's  
12 freight cost and other miscellaneous duties such as  
13 filing, matching up checks with their ticket stubs.

14 Q Did you interface with customers in that role?

15 A Sometimes.

16 Q How long were you at the trip ticket desk?

17 A I don't recall. I know that it's on my reviews how  
18 long I was -- like, when I switched desks. You  
19 know, they kept us moving along.

20 Q Was it a promotion to go from order processing to  
21 the trip ticket desk?

22 A You mean from the scale payable desk to the trip  
23 ticket desk?

24 Q Yes. Scale payable.

25 A Yes.

1 Q And where did you go after the trip ticket desk?

2 A I believe I went to the orders desk. I'm not  
3 positive. I've switched back and forth a couple  
4 times between the orders desk and the sales  
5 brokerage desk, so I can't remember if I started  
6 out first at the orders desk or if it was  
7 vice-versa.

8 Q Okay. But whatever the move was from the trip  
9 ticket desk, was that part of a promotion?

10 A Yes.

11 Q And assuming that it was the -- Well, strike that  
12 question. Do you know how long you were at the  
13 trip ticket desk?

14 A No.

15 Q Do you think it was months or years?

16 A I think it was maybe a year, maybe more.

17 Q Okay.

18 A Maybe around a year.

19 Q What were your job responsibilities at the orders  
20 desk?

21 A Entering contracts that were made between the  
22 marketing agents and customers, putting pricing  
23 into the system so that the orders -- you know, so  
24 the tickets would be paid correctly, calculating  
25 pricing based on iron age reports or other market

1           papers. Other miscellaneous duties included more  
2           filing. I don't recall all of the duties. I know  
3           there's more -- a lot more.

4       Q    Okay. And did you interface with customers at the  
5           orders desk?

6       A    Not -- No.

7       Q    Okay. How long were you at the orders desk?

8       A    I don't know.

9       Q    Months or years?

10      A    I don't know. I don't recall how long I was at any  
11           of the desks, really.

12      Q    Okay.

13      A    I know the longest one that I was at was the sales  
14           brokerage desk.

15      Q    And you think that was -- that could have been  
16           after the orders desk or the reverse?

17      A    Right. We would flip around based on the needs of  
18           the department at the time. I know between the  
19           sales and orders desk, I flipped back and forth  
20           between those two desks a couple times, and I'd  
21           also go back to other desks, as needed.

22      Q    And in terms of the "as needed" or "what the  
23           department needs were at the time," was that due,  
24           in part, to some of the reductions that were taking  
25           place at Miller from year to year?

1       A     No. That was based on if I had to help train  
2           people or if other people were -- We did a lot of  
3           cross-training, and we were doing a six-month  
4           rotation where we would each do a desk for six  
5           months and then move along to another desk for six  
6           months. So they had, like, a schedule so that we  
7           could all stay current on each other's job duties.

8       Q     When you moved to the sales brokerage desk, was  
9           that a promotion?

10      A     Yes.

11      Q     And what were the job responsibilities there?

12      A     Process daily scale tickets to invoice customers  
13           for scrap, process brokerage tickets to pay an  
14           invoice to customers for scrap. I had to enter  
15           manually outside-hauler brokerage tickets for  
16           payables and receivables for scrap. I had to mail  
17           out invoices to customers. Miscellaneous duties  
18           included filing, making copies for customer's  
19           checks, and I'm sure there's more. There were a  
20           lot of duties at that desk.

21      Q     Did you interface with customers at that desk?

22      A     Sometimes. If there was a problem, if there was a  
23           price wrong or something, they would call. People  
24           -- Sometimes people would call, but it wasn't very  
25           often that there was a problem.

1       Q     Okay. But if a customer did have a problem with  
2           their invoice or if they were going to make a late  
3           payment or had some sort of issue, was it the sales  
4           brokerage desk that they would call?

5       A     They would call whatever desk that was working on  
6           their paperwork, yes. So if there was a problem  
7           with an invoice and I did that invoice, yes, I  
8           would take that call.

9       Q     And how many years were you at the sales brokerage  
10          desk -- or months?

11      A     I don't know the exact amount of years. I know it  
12          was several years that I was there. Probably --  
13          Steady? At least five steady years.

14      Q     Were you working at the sales brokerage desk in  
15          2007?

16      A     2007? I couldn't be sure.

17      Q     Okay. Did you work any -- in any other role other  
18          than the sales brokerage desk that we were just  
19          discussing and the other positions you already  
20          mentioned?

21      A     Yes.

22      Q     So where did you go after the sales brokerage desk?

23      A     No. Within that, I cross-trained in other  
24          departments. I didn't work at another desk, but I  
25          used to help out and work in the Pewaukee scale. I

1           was trained out there, and I would work there on  
2           Saturdays.

3   Q   Were you working at the sales brokerage desk in  
4           2012, when you left the company?

5   A   Yes.

6   Q   Okay. So other than the four positions and the  
7           Pewaukee location, are there any other positions  
8           that you held during your tenure at Miller  
9           Compressing?

10   A   I don't believe so.

11   Q   Okay. In 2011, you requested the ability to  
12           telecommute and work from home. Is that correct?

13   A   Correct.

14   Q   And why is that?

15   A   Does it say when in 2011?

16   Q   Well, I -- Let me show you what we have marked as  
17           Exhibit 2. This might help refresh your  
18           recollection. And just for the record, this is an  
19           October 17, 2011 e-mail that references "Time  
20           Warner has begun, and Tracy has confirmed,  
21           TeleWorker Internet service as of October 13, 2011.  
22           She is at the \$34.79/month rate." Do you see where  
23           I'm reading at the top of the e-mail chain?

24   A   Yes.

25   Q   Okay. And I know you're not on this e-mail, so I

1           don't know if you've ever seen that, but does that  
2       help refresh your recollection as to when you  
3       requested to be able to work from home and to  
4       telecommute?

5     A    No.

6     Q    Okay.

7     A    That's incorrect.

8     Q    Okay.

9     A    This doesn't have anything to do with that.

10    Q    Okay. So what makes you say that this doesn't have  
11       anything to do with when you requested that you  
12       work from home?

13    A    This was an offer by Time Warner Cable that the  
14       entire company got made through Miller Compressing.  
15       Time Warner Cable offered all of us business class  
16       speed if we would take Internet through Miller, and  
17       they would deduct it from our paycheck every month.  
18       I had already had Internet at home. But if you  
19       wanted an upgrade for a reduced fee, you could do  
20       that. This deal was offered to the entire company.

21    Q    Okay. But did you request or take advantage of the  
22       deal because you were going to start working from  
23       home, and so you wanted the business service or had  
24       you already started working from home at the time  
25       that you upgraded?

1 A Can you please split your questions up?

2 Q Sure. I'm trying to figure out when it was that  
3 you requested to start working from home. So my  
4 question is, had you already started working from  
5 home before you requested and received the upgraded  
6 service from Time Warner?

7 A No. This didn't have any -- I was not -- This did  
8 not have to do with me working at home.

9 Q Okay. So you had not started working from home yet  
10 at the time that the TeleWork Internet service was  
11 added to your home service?

12 A Not that I recall.

13 Q Okay. Do you recall when you did start working  
14 from home?

15 A Yes.

16 Q And when was that?

17 A February.

18 Q Of what year?

19 A 2012.

20 Q And why did you request to work from home and to  
21 telecommute in February of 2012?

22 A That's when my son was removed from daycare.

23 Q Okay. And why did you need -- What does that have  
24 to do with your request?

25 A Because he has a disability, and I was exercising

1                   my FMLA rights to be able to take care of him.

2   Q   Okay. I understand you think you were exercising  
3                   your FMLA rights. I'm trying to understand what  
4                   your son's diagnosis had to do with your request to  
5                   work from home. So can you tell me why you needed  
6                   to be able to telecommute or work from home?

7   A   To help offset my workload at the time that I  
8                   wasn't able to be at work, to be able to do the  
9                   work that I was, you know, supposed to be -- the --  
10                  Say it again, please. I'm confused.

11   Q   I'm trying to understand what prompted you to  
12                  request the ability to telecommute and work from  
13                  home in February 2012.

14   A   Okay.

15   Q   That's the question.

16   A   Say it again.

17   Q   Why did you ask to work from home in February 2012?

18   A   So I could work -- So I could get work done.

19   Q   But what prompted -- What prevented you from going  
20                  in to the office to get your work done?

21   A   My son's disability.

22   Q   Okay. What about your son's disability prevented  
23                  you from being able to go into the office?

24   A   Because he was unable to attend daycare due to his  
25                  disability.

1 Q And you had no other child care?

2 A No. He was kicked out of daycare. I did have  
3 other -- My mother watched him three days a week,  
4 and then I care for him the other two days a week.

5 Q Okay. When your mother cared for him, what were  
6 your work hours on the days that your mother cared  
7 for him? When would you go in to work?

8 A 7 to 3.

9 Q Okay. So you kept your previously-approved changed  
10 hours. Correct?

11 A Yes.

12 Q Okay. And then on the two days when you cared for  
13 him, what did your schedule entail? Did you go in  
14 to the office at all?

15 A Yes. I would go in to pick up my workload.

16 Q And what time would you do that?

17 A In the morning, probably -- I'd probably have to  
18 drop off my other son at school, so I would assume  
19 I would maybe get there at 9 a.m.

20 Q And then you would take your work home?

21 A Yes.

22 Q And do your work throughout the course of the day?

23 MR. OLSON: Object to form.

24 BY MS. LORENC:

25 Q You can answer.

1 A If time permitted. If he napped.

2 Q Do you recall which two days out of the week you  
3 would work remotely when you first requested this  
4 in February 2012?

5 A No.

6 Q Was it -- Was your schedule consistent as to which  
7 days you worked at home and which days you came in  
8 to the office in 2012?

9 A I believe so.

10 Q Did it remain consistent throughout 2012?

11 A I believe it did.

12 Q When you requested the ability to work from home in  
13 February of 2012, did you intend it to be a formal  
14 permanent change to your schedule?

15 A I didn't have any intentions about it at the time.  
16 I had no idea what was going to happen with my son.  
17 We were hoping -- We were trying to get him help.

18 Q Did you -- In February 2012, were you looking for  
19 other forms of child care other than your mother  
20 and you?

21 A Yes.

22 Q And were you intending to be able to come back to  
23 work those other two days at some point in time?

24 A Yes.

25 Q And at any point in time -- Strike that. Were you

1           able to find child care for your son for those  
2           other two days in 2012?

3     A   For a bit of time, I did. I had another relative  
4           of mine come into my home on those other two days  
5           for a time, and then she ended up having a seizure  
6           and could no longer drive.

7     Q   Do you recall when that was?

8     A   No.

9     Q   And do you recall how long it was that you had that  
10           child care for the other two days?

11    A   No.

12    Q   Are we talking months? Are we talking a couple of  
13           times?

14    A   It was probably just a couple weeks -- maybe a few  
15           weeks that she was able to come and help me.

16    Q   And on those days that she was able to come and  
17           help you, did you then go in to the office those  
18           two days?

19    A   Yes.

20    Q   So for those couple of weeks, you were working five  
21           days a week?

22    A   I don't recall.

23    Q   And do you recall for those couple of weeks in 2012  
24           when you had additional help, were you working 7 to  
25           3?

1 A Yes.

2 Q During your time at Miller Compressing from  
3 November of 1999 to your departure in 2012, did the  
4 company undergo reductions in force?

5 A Yes.

6 Q Tell me about that. When did that occur?

7 A I know that there was a reduction when the scrap  
8 market crashed in, like, 2008.

9 Q Okay. And do you know how many people were laid  
10 off?

11 A No. I have no idea.

12 Q Were you ever laid off in 2008?

13 A No.

14 Q Subsequent to 2008, are you aware of any other  
15 reductions in force?

16 A What does "subsequent" mean?

17 Q After 2008.

18 A After? Yes.

19 Q When was the next one, that you recall?

20 A I don't recall a year. I just know -- I know that  
21 they got rid of some yard guys.

22 Q And any other times that you recall them going  
23 through reductions?

24 A No. I don't know -- I know that they had the 2008  
25 crash and I know that they had gotten rid of a few

1 people after that, but I have no idea about the  
2 years when that was done.

3 Q How many people do you think they got rid of in  
4 2008?

5 A I have no idea.

6 Q Okay. Were you aware that between 2008 and 2012,  
7 they went through eight reductions in force?

8 MR. OLSON: She just said she didn't  
9 know.

10 | THE WITNESS: No.

11 MR. OLSON: I object to form.

12 | BY MS. LORENCE

13 Q You're allowed to answer. I believe you said "No,"  
14 you weren't aware of that?

15 A No

16 Q Were you aware that in September of 2012, Miller  
17 Compressing was bought by another company?

18 | A When?

19 | P a g e In September of 2012

20 A No I was not aware that they were bought

21 Q Were you aware that in July of 2012, there was a  
22 reduction in force undertaken?

23 | A No

24 Q You'd never heard that people were going to be laid  
25 off in July of 2012 because of the financial

1                   strains of the company?

2   A   Are you talking about like rumors? Did we hear  
3                   rumors of people getting let go?

4   Q   Well, let's start with rumors. Did you hear any  
5                   rumors that in July of 2012, people were going to  
6                   be let go?

7   A   Yes.

8   Q   Okay. Do you recall hearing rumors as to why  
9                   people were going to be let go in July of 2012?

10   A   I'd heard that the company was on the market.

11   Q   On the market to be purchased?

12   A   Right.

13   Q   Okay. Do you know why it was on the market?

14   A   Because Bob Miller died, and nobody in his family  
15                   wanted it. That's what we were under the  
16                   impression of. None of his family members wanted  
17                   to take over the business, so it had been on the  
18                   market for years, according to what we were told --  
19                   that it was always going to be available for  
20                   purchase.

21   Q   Do you remember being told that the company wasn't  
22                   doing well in July of 2012?

23   A   No.

24   Q   Do you remember having any meetings in the summer  
25                   of 2012, aside from rumors? Do you remember having

1           any meetings about the company being in financial  
2           difficulties?

3     A    I remember meetings being held about the company's  
4           financial state, but what I remember being said was  
5           that the non-ferrous side of the company was being  
6           -- kept us afloat.

7     Q    What do you mean?

8     A    There's a non-ferrous metal and a ferrous metal.  
9           The ferrous side of the company was breaking even,  
10          but the non-ferrous side of the company was the  
11          money-maker, and they would always tell us that  
12          that is what was keeping the company going.

13    Q    Okay. Let's talk about that a little bit. Which  
14          side were you on?

15    A    I was on the -- My desk dealt with -- My desk or  
16          the department? We dealt with both.

17    Q    Okay. Which side was your desk on?

18    A    My desk was on the ferrous side of the company.  
19          The ferrous side -- I dealt with ferrous.

20    Q    Okay.

21    A    Sorry. It's confusing.

22    Q    But your department dealt with both sides. Is that  
23          what you're saying?

24    A    Yes. So -- We would always do both, but there are  
25          certain desks that dealt with -- We were all

1                   intermingled, so when I did the orders desk, it was  
2                   doing both. So it just depended on what you were  
3                   doing at the time. So -- Like I said, we were all  
4                   in that rotation. So we --

5       Q     Okay. And when do you recall -- You said you  
6                   remember being told or being in a meeting, I think  
7                   you said, that you were told that the ferrous side  
8                   would -- was just breaking even, but the  
9                   non-ferrous side was the money-maker. When was  
10                  that meeting?

11      A     I don't recall.

12      Q     Was it in 2012?

13      A     I don't know.

14      Q     Do you remember when it was in relation to when you  
15                  left the company?

16      A     No. I have no idea.

17      Q     Was it pretty soon before -- or pretty close to the  
18                  time or are we talking a year before you left the  
19                  company?

20      A     I don't recall. I have no idea.

21      Q     Okay. I believe you said that at the time you left  
22                  the company you were with the sales brokerage desk.  
23                  Correct?

24      A     Yes, I was.

25      Q     And you'd been there for about five years?

1 A Yes.

2 Q Okay. When you first came over to the sales  
3 brokerage desk, how many people were in that  
4 department?

5 A When I first came over there? I don't know if I  
6 had -- if -- If I'd say anything, it would be a  
7 guess. I don't know.

8 Q What would your guess be?

9 A Six.

10 Q Okay. And I appreciate this is going back to  
11 roughly 2007, so I understand that this is a while  
12 back, but your guess would be about six people. At  
13 the time that you left the company in 2012, how  
14 many people were in that department?

15 A There was six of us.

16 Q When you first started at the sales brokerage desk  
17 to when you left the company in 2012, did you have  
18 additional responsibilities placed on you?

19 A Say that again, please.

20 Q I'll rephrase it. From when you started in that  
21 department in roughly 2007 to when you left, did  
22 you get additional responsibilities that you were  
23 charged with handling when you were in that  
24 department?

25 A From desk to desk or just --

1 Q While still at the sales brokerage desk. Did they  
2 ask you to do more things?

3 A I don't recall. I mean, I did everything that the  
4 desk -- that pertained to that desk. I didn't,  
5 like, do anything from other people or, like,  
6 people didn't just give me duties to do.

7 Q Do you remember the job itself changing over those  
8 five years of what was expected of you?

9 A No. The paperwork all stayed the same. It was  
10 always the same paperwork. If anything, it got  
11 more efficient as they got new programs and stuff.  
12 Some of it got more efficient.

13 Q Did you take on new or different paperwork in  
14 addition to what you had previously been doing?

15 A Not that I recall.

16 Q Okay. So it's your recollection that the sales  
17 brokerage desk job was pretty much the same  
18 throughout that entire five-year period?

19 A Yeah, pretty much. Some of the forms changed here  
20 and there, and we got laser printers instead of,  
21 like, three-part. I mean, you know, some stuff was  
22 simplified. It made it easier to do.

23 Q But overall, you don't remember the job changing  
24 much in the five years that you were at that desk.

25 A No.

1 Q And it's your testimony that the size of the  
2 department did not change in the five years you  
3 were at that desk.

4 A The size of the department would vary. We had a  
5 time where we were short-staffed, and then they  
6 would hire somebody new, and then that person  
7 wouldn't work out, so then we'd be short-staffed.  
8 So, yes, the company -- The department itself did  
9 change, but usually there was six people at --  
10 There's one person for each desk. That's the way  
11 it was when I got there, and that's the way it was  
12 up until the end. There were six people. As far  
13 as I remember, there were six people -- one person  
14 for each desk.

15 Q When do you recall the department being short-  
16 staffed?

17 A One of my maternity leaves, I know it was short-  
18 staffed. They hired a replacement for me to go on  
19 maternity leave, and they fired her like a week  
20 before I left.

21 Q So was that for your first pregnancy or your second  
22 pregnancy?

23 A My second.

24 Q And what year would that have been?

25 A 2008.

1 Q Okay. And so your understanding is they just hired  
2 someone to fill your role for the 12 weeks you were  
3 out on FMLA leave?

4 A Correct. But I wasn't out for the full 12 weeks.  
5 I came back early because they needed the help.

6 Q Okay. You voluntarily came back early?

7 A My boss or my supervisor asked if I could come back  
8 early part-time, and I agreed.

9 Q And that was in 2008, you said?

10 A Yes.

11 Q Any other times that you remember the department  
12 being short-staffed?

13 A I don't recall ever missing, like, a complete  
14 person other than if somebody was out on medical.  
15 I know when somebody was out on medical, we'd all  
16 have to scramble and piece apart that person's  
17 desk, and that would be an example of taking on  
18 additional duties, but they weren't permanent.  
19 They were just temporary.

20 Q Okay. Do you know how big the sales brokerage desk  
21 department is now, by any chance?

22 A No. I have no idea.

23 Q And if you need to take a break at any point, just  
24 let me know. You just mentioned taking one FMLA  
25 leave in 2008, but during your time at Miller, you

1           took several FMLA leaves. Isn't that correct?

2   A   Yes.

3   Q   Based on the answers to your request to admit, you  
4        took an FMLA-approved leave in February of 2003  
5        related to preeclampsia. Correct?

6   A   Correct.

7   Q   And again in 2005, you took leave -- FMLA-approved  
8        leave to deal with a scheduled D & C. Is that  
9        correct?

10   A   Correct.

11   Q   May of 2006, you took an FMLA-approved leave to  
12        undergo some chemotherapy treatments?

13   A   Correct.

14   Q   In October 2006, you took FMLA-approved leave to  
15        have surgery on your right foot. Is that correct?

16   A   Correct.

17   Q   In September 2007, you took FMLA-approved leave due  
18        to a herniated disc in your lower back. Correct?

19   A   Correct.

20   Q   We already talked about the March -- I believe it  
21        was March of 2008, your FMLA-approved leave due to  
22        your second pregnancy. Correct?

23   A   Correct.

24   Q   You took a week of FMLA-approved leave in September  
25        of 2008. Is that correct?

1 A Correct.

2 Q And then in July of 2011, you requested FMLA leave  
3 to cover appointments necessary for treatment. Do  
4 you recall that?

5 A Yes.

6 Q What were -- What treatments were you seeking leave  
7 to attend appointments?

8 A For my children's appointments. They weren't for  
9 mine.

10 Q Okay. What kinds of appointments?

11 A Doctors' appointments or evaluations.

12 Q You said "children's." Was this for both your kids  
13 or one of your two children?

14 A At the -- Just for a short period of time both of  
15 them were -- I had to get my other son an  
16 appointment for something as well.

17 Q So this was a one-off type of situation or was this  
18 for something that was going to be reoccurring?

19 A This -- For Evan, it was going to be reoccurring.  
20 We were trying to get him evaluated and --

21 Q Is Evan your first or second child?

22 A Second.

23 Q Okay. So in July of 2011, Evan was going through  
24 evaluations?

25 A Yes.

1 Q And you needed FMLA intermittent leave to be able  
2 to take him to doctors' appointments. Is that a  
3 fair statement?

4 A Yes.

5 Q Okay. And that -- And then the February 2012,  
6 which we've already talked about, was when you were  
7 requesting the ability to work from home two days a  
8 week. Is that correct?

9 A Yes.

10 Q And all those FMLA-approved leaves that we just  
11 went through, all of those were approved by the  
12 company. Correct?

13 A Yes.

14 Q And you came back to work in the same job you'd  
15 left for each one of those leaves. Correct?

16 A Yes.

17 Q Tell me why you've filed a lawsuit against Miller  
18 Compressing.

19 MR. OLSON: Object to the form, overly  
20 broad, calls for a narrative.

21 MS. LORENC: None of which are  
22 impermissible.

23 MR. OLSON: You can answer if you  
24 understand it.

25 THE WITNESS: Repeat the question,

1           please.

2 BY MS. LORENC:

3 Q Tell me why you've filed a lawsuit against Miller  
4 Compressing.

5 A Because they violated my FMLA rights.

6 Q And how have they done that?

7           MR. OLSON: Object to form.

8 BY MS. LORENC:

9 Q You can answer.

10 A By not allowing me to stay home to take care of my  
11 disabled son.

12 Q Any other ways that they've violated your FMLA  
13 rights?

14           MR. OLSON: Object to form to the extent  
15 it calls for a legal conclusion. You can answer.

16           THE WITNESS: Yes.

17 BY MS. LORENC:

18 Q How else?

19 A By changing my hours from 7 to 3 to 8 to 4.

20 Q Any other ways?

21           MR. OLSON: Same objection as to form, to  
22 the extent it calls for a legal conclusion. You  
23 may answer.

24 BY MS. LORENC:

25 Q Any other ways that Miller Compressing violated

1                   your FMLA rights?

2   A   Yes.

3   Q   And what else?

4   A   I was told that I could not longer make or receive  
5                   any calls regarding Evan during the workday unless  
6                   I was on break.

7   Q   Any other ways that your FMLA rights were violated  
8                   by Miller Compressing?

9                   MR. OLSON: Same objection. Go ahead.

10                  THE WITNESS: Yes.

11                  BY MS. LORENC:

12   Q   What other ways?

13   A   I was told that my FMLA only covered appointments  
14                  and therapy sessions for Evan and that it did not  
15                  include being able to stay home and care for him.

16   Q   Appointments and what was the other thing you were  
17                  told that was covered? I'm sorry.

18   A   Therapy.

19   Q   Therapy. Any other ways you believe your FMLA  
20                  rights were violated by Miller Compressing?

21   A   Yes.

22   Q   What else?

23   A   I was told I could no longer discuss Evan with any  
24                  employees.

25   Q   Any other ways you believe your FMLA rights were

1                   violated by Miller Compressing?

2                   MR. OLSON: Same objection.

3                   THE WITNESS: Yes. Could we recap what

4                   I've said so far?

5                   BY MS. LORENC:

6                   Q Well, how about I read them and you tell me if I'm  
7                   missing anything or have misstated anything. You  
8                   believe your rights were violated because you were  
9                   told you could no longer stay home to care for your  
10                  disabled son. Correct?

11                  A (Witness nods head.)

12                  Q Yes?

13                  A Correct.

14                  Q Because your hours were changed from 7 to 3 to 8 to  
15                  4. Correct?

16                  A Yes.

17                  Q You were told that you could no longer make or  
18                  receive calls regarding Evan. Correct?

19                  A During the workday, unless I was on break.

20                  Q During the workday. Okay. You were told that FMLA  
21                  only covered Evan's appointments and therapy  
22                  sessions. Correct?

23                  A Correct.

24                  Q And that you were told you couldn't discuss Evan  
25                  with other employees during the workday.

1 A Correct.

2 Q Did I misstate anything other than when you already  
3 corrected me? And I apologize for that.

4 A Not that I'm aware of.

5 Q And is there anything else, after hearing the  
6 recap?

7 A Yes. I was also -- Hang on. I was also told that  
8 I could not use my boss to help me prioritize my  
9 desk.

10 Q What does that mean?

11 A Like, just in general. I could not use -- Because  
12 I was -- If I was staying home with him two days a  
13 week, and Matt would need me to do something  
14 urgently if I would come in the next day, he would  
15 say "Do this first." I could no longer ask him if  
16 there was -- I could no longer ask him advice on  
17 how to prioritize -- if he needed something done  
18 right away. I could no longer ask him because I  
19 was missing those two days in the office. I could  
20 also no longer ask any of our OP team members -- I  
21 could not use them for backup anymore. We all had  
22 backups that we were able to use if we were out  
23 sick for a day. Everybody was trained on each  
24 other's desk. I was told I could no longer have a  
25 backup within the department or eliminating Diana,

1           who was my backup. I could no longer use her  
2           anymore.

3       Q    Were you told why you could no longer use Diana?

4       A    No.

5       Q    Anything else?

6       A    There may be more. They are listed in the  
7           interrogatories.

8       Q    Okay. All right. So let's go back and kind of go  
9           through these things. When you say your FMLA  
10          rights were violated because you were told you  
11          could no longer stay home to take care of your  
12          disabled son, does that mean that you were told you  
13          could no longer have your two days working from  
14          home?

15      A    Correct.

16      Q    That you were expected to be in the office five  
17          days a week?

18      A    Yes.

19      Q    Okay. And when -- Was this in July of 2012 that  
20          you were told that you could no longer telecommute  
21          two days?

22      A    Yes. July 13.

23      Q    And at that point, you'd been telecommuting since  
24          February of 2012. Is that correct?

25      A    Yes.

1 Q Did they tell you why you needed to work five days  
2 out of the week in the office in -- starting in  
3 July of 2012?

4 A They said my FMLA coverage did not cover me being  
5 able to stay home with him. I needed to be in the  
6 office Monday through Friday, 8 to 4.

7 Q Did they give you any other reasons?

8 A Not that I recall.

9 Q Do you recall them telling you it had anything to  
10 do with the financial issues at the company?

11 A No.

12 Q Do you remember being told that there were going to  
13 be reductions in force in July of 2012 during the  
14 time that you were told that you needed to be in  
15 the office five days out of the week?

16 A No.

17 Q Do you recall being told that the department was  
18 going to have to do less -- or do more with less?

19 A No.

20 Q Do you recall anything about your -- Strike that.  
21 Let's back up to the July 13 date when you were  
22 given this information. How were you -- How was  
23 this information conveyed to you? Did you have a  
24 meeting?

25 A Yes. I was called -- It was not a pre-planned

1 meeting, no. I was just called down to the HR  
2 conference room at the end of the day.

3 Q Yeah. And I didn't ask you if it was pre-planned.  
4 But you had a meeting on July 13 with --

5 MR. OLSON: You're doing fine. Answer  
6 the questions as you understand them.

7 THE WITNESS: Pardon me?

8 MR. OLSON: You're doing fine. Answer  
9 the questions as you understand them.

10 BY MS. LORENC:

11 Q I just want to be clear that this was not a group  
12 session or a phone call. You had a meeting with  
13 people on July 13. Correct?

14 A Yes.

15 Q And who was that meeting with?

16 A Sarah Barbian and Matt Chavez.

17 Q And it was during that meeting that you were told  
18 you needed to be in the office five days out of the  
19 week. Correct?

20 A Yes.

21 Q And it's your testimony that during that meeting  
22 you were not told that the company was going to be  
23 going through reductions in force?

24 A Correct.

25 Q Did either Sarah or Matt tell you anything about

1           the financial situation of the company or some  
2           terminations that were coming up or anything about  
3           what was going on at the company?

4     A    No.

5     Q    You also mentioned that they said that your hours  
6           needed to change from 7 to 3 to 8 to 4. Did they  
7           explain why?

8     A    I believe that's just because that's what everybody  
9           else -- it was more in accordance with what  
10           everybody was working.

11    Q    And that was also during the July 13 meeting with  
12           Sarah and Matt, that that message was conveyed to  
13           you?

14    A    Yes.

15    Q    Do you recall them saying that you needed to be  
16           there from 8 to 4 because that's when customers  
17           also worked?

18    A    Specifically, no.

19    Q    Do you generally recall that being conveyed to you?

20    A    No. I recall them saying that it had to do with  
21           more in accordance with what everybody else in our  
22           company worked, 8 to 4.

23    Q    And you don't remember any reference to customer  
24           hours?

25    A    No. I don't remember any reference to customer

1                   hours.

2     Q     You mentioned you believe your FMLA rights were  
3                   interfered with or violated because you were told  
4                   you could no longer make or receive calls regarding  
5                   Evan.  Was this during this same July 13 meeting?

6     A     Yes, it was.

7     Q     Okay.  And do you recall being told why that was?

8     A     No.

9     Q     Was an explanation given?

10    A     You're confused on something.  Some of those bullet  
11                  points do not have to do with the actual meeting.  
12                  Some of those bullet points were the phone call  
13                  that Sarah and I had after the meeting.

14    Q     Okay.  So -- Thank you for clearing that up.  Let's  
15                  take it a step back.  Were you told during your  
16                  July 13 meeting with Matt and Sarah that you could  
17                  no longer make or receive calls regarding Evan?

18    A     No.

19    Q     When were you told that?

20    A     On the phone.

21    Q     When?

22    A     About 20 minutes after that meeting, after I left  
23                  for the day, on a phone call with Sarah.

24    Q     Okay.  So you left the meeting at some point in  
25                  time, and then -- Did you leave the office right

1 after the meeting?

2 A Yes. It was my time to go. It was about 3:00.

3 Q And if I recall correctly, July 13 was a Friday.

4 Correct?

5 A Yes, it was.

6 Q Okay. Did you call Sarah after the meeting or did  
7 she call you?

8 A She called me.

9 Q And why did she call you?

10 A She left me a voicemail saying she had more things  
11 she wanted to discuss, such as those points that  
12 you wrote down.

13 Q And did you then call her back?

14 A Yes, I did.

15 Q Also on July 13?

16 A Yes.

17 Q And what was discussed during that phone call?

18 A All the changes that needed to be made by Monday if  
19 I wanted to keep my job, which were some of the  
20 points that you wrote down.

21 Q Okay. Did she explain why, during that phone call,  
22 you could no longer make or receive calls regarding  
23 Evan?

24 A No. She didn't explain.

25 Q Did you ask her why?

1 A No.

2 Q Did you ask her any questions during that  
3 conversation about why these things were being --  
4 why these changes were occurring?

5 A Yes, I asked her why my FMLA coverage did not  
6 include taking care of Evan two days a week  
7 anymore.

8 Q And what response did she give you?

9 A She said that the doctors would write anything on  
10 the FMLA paper in order to get it approved, and  
11 that all small children needed to be in daycare and  
12 that I couldn't work from home anymore.

13 Q So let's talk about that. She's telling you that a  
14 doctor will put anything on a doctor's note. Did  
15 you respond to that?

16 A No, I did not.

17 Q Did you say "That's not what's occurring in my  
18 situation"?

19 A No, I did not. I just asked her to list everything  
20 that they needed me to change. She said she had  
21 several more things they needed me to make changes  
22 on, so I asked her to list them so I could discuss  
23 it with my husband and my mother to see if we could  
24 make it work.

25 Q That seems like a pretty serious statement for

1                   someone in HR to say -- that a doctor would put  
2                   anything on a sheet. Did that strike you as  
3                   offensive when she made that comment?

4     A   I was taken aback by it, yes.

5     Q   But you didn't say anything to her in response to  
6                   it?

7     A   No.

8     Q   Why?

9     A   Because I was already upset, and I just figured  
10                  "Let's get everything on" -- You know, let's -- I  
11                  had to hear what she had to say. She said if I  
12                  didn't call her back by the end of the day, I would  
13                  be considered a voluntary quit. So I just wanted  
14                  to hear what she had to say so I could figure out,  
15                  you know, what she needed me to do.

16    Q   She told you you needed to make a decision by the  
17                  end of July 13 as to whether or not you could make  
18                  those changes?

19    A   No. I had the weekend.

20    Q   Okay. You previously said that you had to make the  
21                  decision by the end of the day.

22    A   I had to call her back by the end of the day.

23    Q   Of July 13 -- of that Friday.

24    A   What's your question? Start over.

25    Q   I'm trying to understand what time frame she put on

1           it. You said that you needed to call her back by  
2           the end of that day or else it would be considered  
3           a voluntary quit.

4     A    Right. After I left the meeting.

5     Q    So the end of July 13, that Friday, you needed to  
6           call her back? Is that your statement?

7     A    I needed to call her back to hear the rest of the  
8           changes that they needed me to make.

9     Q    Okay. So are you talking about her voicemail at  
10           this point then? Her voicemail said that you  
11           needed to call her back by the end of the day?

12    A    Yes.

13    Q    So not that you needed to make a decision as to  
14           whether or not you could accept the terms by the  
15           end of July 13, but you needed to call her back by  
16           the end of July 13.

17    A    Yes. I needed to call her back by the end of the  
18           day on July 13.

19    Q    Okay. But in terms of then when you did call her  
20           back, is that when she made the statement about you  
21           could no longer make or receive calls regarding  
22           Evan?

23    A    Yes.

24    Q    It wasn't something that she said during her  
25           voicemail. It was something communicated directly

1 to you?

2 A Yes.

3 Q And her statement about "A doctor will put anything  
4 on a doctor's note," was that made on the voicemail  
5 or was that made directly to you?

6 A On the phone call directly to me.

7 Q Okay. All right. But you didn't say anything in  
8 response to that kind of comment?

9 MR. OLSON: Asked and answered. You can  
10 answer again.

11 THE WITNESS: No, I did not. I asked her  
12 to go over everything that they needed me to  
13 change.

14 BY MS. LORENC:

15 Q What about her comment that "All small children  
16 should be in daycare"? Were you offended by that  
17 statement?

18 A She said "All small children need daycare."

19 Q Okay. Did that bother you when she said that?

20 A Yes.

21 Q Did you respond to that statement?

22 A I believe I said something to the effect that "His  
23 disability prevents him from being in daycare" or  
24 something to the effect of "not disabled children."

25 Q Did she say anything in response to that?

1 A Not that I recall.

2 Q Did it bother you that she made a statement like  
3 that?

4 MR. OLSON: Asked and answered.

5 BY MS. LORENC:

6 Q You can answer.

7 A Yes.

8 Q Did you complain to anybody at Miller Compressing  
9 that Sarah had said to you "Any doctor will put" --  
10 something to the effect that "Any doctor will write  
11 anything on a doctor's note" or her statement that  
12 "All small children should be in daycare"?

13 A I don't know. Did I complain to anybody? Like  
14 after that phone call?

15 Q Yes.

16 A I was already at home. So no.

17 Q Did you tell Matt Chavez that Sarah had made these  
18 kinds of comments to you?

19 A No.

20 Q Was Matt your supervisor at the time?

21 A Yes.

22 Q Did you complain to anybody above Matt that Sarah  
23 had made these kinds of comments to you?

24 A No. I was already at home. I was already at home  
25 on the phone with her. There was nobody I could

1 complain to.

2 Q Beyond just July 13. At any point in time did you  
3 make a complaint about the statements that were  
4 made to you about the doctor's note and children  
5 needing to be in daycare?

6 A No.

7 Q You mentioned Margo before. Was she still employed  
8 by Miller Compressing in July of 2012?

9 A Yes.

10 Q Did you mention to her that Sarah had made these  
11 comments to you?

12 A No. I have no contact with Margo.

13 Q The making and receiving of phone calls, I want to  
14 show you what we've previously marked as Wink  
15 Exhibit 3, and I'm showing you what's dated  
16 October 11, 2011. It's entitled "Cell  
17 phone/texting/e-mailing and driving policy." Is  
18 that correct?

19 A Yes.

20 Q And just for the record, this is Bates labeled  
21 D000537 through 538. If you could read the first  
22 sentence of the second paragraph for the record.

23 A "Personal cell phones are prohibited from being  
24 used during working hours by all employees and  
25 should be kept in the employee's locker or desk,

1                   except for production truck drivers, and used only  
2                   while on lunch or break times."

3       Q    Okay. Did you understand this policy to be in  
4                   effect in July 2012?

5                   MR. OLSON: Object to form.

6       BY MS. LORENC:

7       Q    You were aware that this policy was in effect in  
8                   July of 2012. Correct?

9                   MR. OLSON: Object to form.

10      BY MS. LORENC:

11      Q    You can answer.

12      A    Yes.

13      Q    And by "this policy," I'm referring to the cell  
14                  phone/texting/e-mailing and driving policy, so I  
15                  will rephrase the question. You understood that in  
16                  July of 2012, the document marked Exhibit 3  
17                  entitled "Cell phone/texting/e-mailing and driving  
18                  policy" was in effect. Correct?

19                   MR. OLSON: Object to form.

20      BY MS. LORENC:

21      Q    You can answer.

22      A    Yes. But I had an exception.

23      Q    Who told you you had an exception?

24      A    John Busby and HR. I cleared it with them to be  
25                  able to use my cell phone just for that specific

1           time period because I was waiting on so many  
2           doctors' calls.

3       Q     What specific time period?

4       A     February to July of 2012.

5       Q     So explain that to me. When did you get the  
6           exception from John Busby in HR?

7       A     I don't recall the exact month.

8       Q     Was this a conversation that you had with John in  
9           HR or how did this exception come about?

10      A     It was a conversation I had with John Busby asking  
11           if it was -- I asked him if it was okay that I had  
12           my cell phone on during the day while I was waiting  
13           for all of these calls and appointments and  
14           evaluations, and he said that was fine. He said to  
15           let HR know.

16      Q     Do you recall roughly when that conversation with  
17           John was?

18      A     No.

19      Q     Who is John Busby?

20      A     He was the president of the company at the time.

21      Q     Was he your direct supervisor?

22      A     No.

23      Q     Did you speak to your direct supervisor about  
24           needing an exception to the cell phone policy?

25      A     Yes. Yeah. He knew that my phone was on and that

1 I got permission to do so.

2 Q So your first communication was with John, and then  
3 you conveyed that message to your supervisor. Is  
4 that correct?

5 A I don't recall how it -- if I talked to Matt about  
6 it first and he told me to ask John or if I was  
7 having a conversation with John and then had one  
8 with Matt. I don't remember how it went.

9 Q Okay. And Matt is Matt Chavez?

10 A Yes.

11 Q And then at some point in time you mentioned HR.  
12 Did you speak to HR about needing an exception to  
13 the cell phone policy?

14 A I told them that I was granted an exception to the  
15 cell phone policy.

16 Q And who is "they"? Who did you tell that to within  
17 the HR department?

18 A It would have either been Peggy or Sarah. I don't  
19 know. Whoever was down there. I don't remember.

20 Q Okay. But you understood it to be an exception to  
21 this policy.

22 A Yes.

23 Q And you mentioned from this period of February to  
24 July 2012, in your mind was this a temporary  
25 exception or was this a permanent exception to the

1                   no-cell-phone policy that was given to you?

2   A   Temporary.

3   Q   And in your mind, when would the exception end?

4   A   I don't know. They didn't give me a limit.

5   Q   Did you have an idea in mind of when you would no  
6                   longer need the exception?

7   A   Yes.

8   Q   When was that?

9   A   When I could get him into the right kinds of  
10                  doctors that -- The people at Wisconsin Early  
11                  Autism Project were telling me to get him checked  
12                  out by a psychiatrist and get him re-evaluated, so  
13                  I was just waiting on a couple phone calls.

14   Q   When were you waiting on a couple of phone calls?  
15                  What month are we in when you're waiting for these  
16                  phone calls?

17   A   It was within that time period.

18   Q   Well, is there any way to narrow it down? So you  
19                  said -- I believe you previously testified that  
20                  your son was diagnosed with autism in February of  
21                  2012. Correct?

22   A   On or around.

23   Q   Okay. And then when did he start -- When did you  
24                  start speaking with these various doctors to try to  
25                  get him evaluated?

1 A I had calls in to several different doctors at the  
2 time.

3 Q What time? We're still in February?

4 A Throughout that whole period, I was -- had doctors'  
5 offices. I had messages in to clinics and  
6 neurologists, psychiatrists. It was very difficult  
7 for somebody to say that they would take on a  
8 four-year-old patient, so I had calls in to  
9 multiple facilities, offices and different kinds of  
10 doctors.

11 Q And explain what that means, when you say you had  
12 "calls in to." What does that mean?

13 A To try to get appointments.

14 Q So you would call and speak to someone at one of  
15 these doctor's offices and say "I have a  
16 four-year-old son that I'd like you to evaluate" or  
17 what were you requesting? An evaluation?

18 A Evaluations and -- Yeah, I would say "evaluations."  
19 I think that's really the word. There's not really  
20 any tests. I mean, there's not like a lab test  
21 they could do.

22 Q Okay. And did any of these offices give you any  
23 indication of when they would be calling you back?

24 A No. I was on waiting lists.

25 Q So it was more just an open-ended -- You wanted to

1           be able to take a call whenever it came in. Is  
2           that a fair statement?

3       A    Yes.

4       Q    The cell phone that you requested the exception  
5           for, was this your own personal cell phone or was  
6           this a cell phone dedicated just to doctors'  
7           offices? Was this a special phone number that you  
8           were giving out?

9       A    No. It was a personal cell phone.

10      Q    The same cell phone you were using for your  
11           everyday use. Correct?

12      A    Yes.

13      Q    Okay. So when you requested the exception to the  
14           -- the cell phone -- The exception to the cell  
15           phone policy that you were requesting of John Busby  
16           in or around February of 2012 was just related to  
17           your own personal cell phone. Correct?

18      A    Yes.

19      Q    You wanted to be able to just utilize your own  
20           personal cell phone and make that an exception to  
21           the policy that said you would be prohibited from  
22           using your personal cell phone. Correct?

23      A    I wanted to be able to not miss the doctor calls,  
24           so I just requested to have it on so that I could  
25           answer it if doctors called.

1 Q Okay. So in February of 2012, when John Busby  
2 granted you the exception to July of 2012, did any  
3 doctors call you during work hours?

4 A Yes.

5 Q Okay. Related to your request that they evaluate  
6 Evan. Correct?

7 A Yes.

8 Q And you would take those calls during work hours.  
9 Correct?

10 A Yes.

11 Q Did you take any other calls during work hours?

12 A No.

13 Q How would you know when the phone rang whether it  
14 was related to a doctor's office calling back in  
15 response to your request for an evaluation?

16 A Based on the phone number.

17 Q Did you have all those doctors' offices inputted  
18 into your phone?

19 A Yes, I did.

20 Q So you would be able to see who was calling you in  
21 each instance when the phone rang?

22 A Right. Caller ID.

23 Q So you would know if it was a Wisconsin -- the  
24 Wisconsin program you were talking about. You had  
25 the capacity to know when the phone rang that it

1                   was them?

2   A   Yes.

3   Q   Was there ever a time that you answered the phone  
4                   and it wasn't related to one of the doctors that  
5                   you had called to seek an evaluation for Evan?

6   A   I don't think so.

7   Q   Each one of the doctor's offices you called, you  
8                   inputted their information into your phone. Is  
9                   that your testimony?

10   A   Yes. The ones I was dealing with, yes.

11   Q   So you don't believe there was ever a time that you  
12                   took a phone call during work hours on your cell  
13                   phone that did not relate to a doctor who you were  
14                   seeking evaluation for Evan.

15   A   Not that I recall. I don't even recall getting  
16                   that many phone calls. I only recall getting like  
17                   two phone calls during that time that had to do  
18                   with that whole time period. I remember having to  
19                   walk into a different office.

20   Q   And yet even though you'd only had to deal with the  
21                   cell phone issue twice, according to your  
22                   testimony, you still felt like this was a big deal  
23                   that they were telling you you now had to adhere to  
24                   the cell phone policy of the company?

25   A   Say it again.

1 Q Well, you just testified that you only recall  
2 getting two phone calls during work hours related  
3 to your own personal cell phone.

4 A Um-hum.

5 Q Correct?

6 A Correct.

7 Q And yet even though there were only two of them, it  
8 still felt like a violation of your FMLA rights to  
9 you when they told you you could no longer use your  
10 personal cell phone during work hours?

11 A They told me I could no longer make or receive any  
12 calls regarding Evan during a workday regardless of  
13 whether it was on the cell phone or not.

14 Q Okay. So let's take that a step back. First of  
15 all, when you say you only got two calls related to  
16 Evan on your cell phone, how many calls on your  
17 personal cell phone do you think you made related  
18 to Evan?

19 A I don't know. I don't recall if I only received  
20 two calls. I said I only remember -- I remember  
21 getting two calls, but I don't know how many I -- I  
22 don't recall if that's a -- if that was all of them  
23 or not.

24 Q Do you have an approximation of how many calls you  
25 made related to Evan during work hours?

1 A No. I would try to make the phone calls while I  
2 was at home caring for him the other two days that  
3 I was not there.

4 Q Do you think you made a phone call a day on your  
5 days that you were in the office related to Evan?

6 A No.

7 Q One a week?

8 A I have no way of guessing or knowing how many phone  
9 calls I would have made back then. I don't know.

10 Q Well, how -- Just so I get an understanding of what  
11 we're talking about here, how frequently were you  
12 making phone calls related to his treatment from  
13 July of 2012 to -- or excuse me -- from February of  
14 2012 to July of 2012? Was this a fairly  
15 time-consuming process or was this just a one-off  
16 call here and there throughout the week?

17 A No. It wasn't very time-consuming. We were on  
18 waiting lists to be seen, so I just had my phone on  
19 in case places would call so I wouldn't get  
20 skipped. So no, it wasn't time-consuming.

21 Q Okay.

22 A Can we take a bathroom break?

23 Q Sure. Yeah. Absolutely.

24 (A break was taken.)

25 BY MS. LORENC:

1 Q We were talking, before we went off the record,  
2 about the making and receiving of calls regarding  
3 Evan. We focused quite a bit on the cell phone --  
4 your personal cell phone and the exception to the  
5 cell phone policy you received from John Busby, but  
6 were you also making phone calls related to Evan on  
7 your work phone?

8 A I don't remember.

9 Q Do you remember being told that you were using your  
10 work phone too much to make personal phone calls?

11 A No.

12 Q You don't recall that ever coming up?

13 A I don't recall.

14 Q Do you recall being told that others around you  
15 were complaining about your excessive use of the  
16 work phone to make personal calls?

17 A No, I do not.

18 Q Do you recall, during your phone call with Sarah on  
19 July 13, being told that she'd had complaints about  
20 your excessive use of the work phone to make  
21 personal calls?

22 A No.

23 Q Going on to the next item you mentioned that you  
24 believe violated your FMLA rights, you said you  
25 were told that FMLA only covered your son's

1                   appointments and therapy sessions. Is that an  
2                   accurate statement?

3       A   Yes.

4       Q   Okay. Was that during your meeting with Sarah and  
5                   Matt or was that comment made during your phone  
6                   call with Sarah?

7       A   I believe it was both.

8       Q   Okay. Tell me about the meeting itself. How long  
9                   did the meeting last with Sarah and Matt?

10      A   Approximately ten minutes.

11      Q   And why did it end?

12      A   I left.

13      Q   Did you leave before the meeting was done?

14      A   Yes. I got very emotional, and I left -- and I  
15                   just left for the day.

16      Q   Okay. You punched out?

17      A   I don't even remember if I punched out.

18      Q   You left right after the meeting.

19      A   Yes, I did.

20      Q   Okay. And that's why Sarah had to call you back  
21                   and say "We weren't finished." Right? "We need to  
22                   keep talking about the items" that they had called  
23                   you in to discuss. Correct?

24      A   Yes.

25      Q   And that's why she said you needed to call her back

1           by the end of the day, since you abruptly left the  
2           meeting. Correct?

3       A    Yes.

4       Q    One of the other items you mentioned violated your  
5           FMLA rights is that you were told you couldn't  
6           discuss Evan with any other employees. Is that a  
7           correct statement?

8       A    Correct.

9       Q    Did your sister work in your department in July of  
10           2012?

11      A    Yes.

12      Q    And when did she start working in the same  
13           department as you?

14      A    I started after her at Miller.

15      Q    Okay. You came to Miller --

16      A    So I came to Miller after she was already working  
17           there.

18      Q    Did you guys always work in the same department?

19      A    No.

20      Q    At some point in time you both started working at  
21           the sales brokerage desk. Is that correct?

22      A    Pardon me?

23      Q    At some point in time you were both working in the  
24           sales brokerage department. Correct?

25      A    The order processing department, you mean?

1 Q Yes.

2 A Yes.

3 Q And you were on the sales brokerage desk.

4 A Yes.

5 Q And what desk was she on in July of 2012?

6 A In July? The orders desk, I think.

7 Q And was that all in the same department, in the  
8 orders processing department?

9 A Yes.

10 Q Where, in relation to your desk, was her desk?

11 A She was two desks away or two cubicles away.

12 Q All right. When you were told that you couldn't  
13 discuss Evan with any other employees, was that  
14 during the meeting portion of your discussion with  
15 Sarah that day or was that on the phone call?

16 A The phone call.

17 Q Do you recall Sarah specifically saying you and  
18 your sister couldn't discuss Evan throughout the  
19 day?

20 A No, she didn't. It was I couldn't discuss Evan  
21 with any employees.

22 Q Do you recall being told that there had been  
23 complaints that you were speaking with others  
24 frequently throughout the day about personal  
25 issues?

1 A No.

2 Q Do you recall being told that it was disruptive to  
3 other peoples' work that you were discussing  
4 personal issues with other employees?

5 A No.

6 Q What did you say in response to being told that you  
7 couldn't discuss Evan with other employees?

8 A I didn't say anything. This is when she was  
9 listing all of the changes that needed to be made  
10 by Monday, so I just let her list them.

11 Q And then when she got done listing them, did you  
12 say anything in response to that?

13 A Yeah. I told her I would have to talk with my  
14 mother and my husband to see if we could make these  
15 changes. We set up a meeting for Monday then.

16 Q Okay. Other than sort of that general statement,  
17 did you respond specifically to any of the items  
18 she'd listed during that phone call?

19 A Not that I recall, no.

20 Q Do you recall asking her any questions about any of  
21 the specific items during that phone call?

22 A I remember asking her the question why my FMLA did  
23 not cover me staying home with him when it was  
24 previously covered to do so.

25 Q But other than that specific item, did you ask her

1           questions about any of the other items that you  
2        listed as violating your FMLA rights?

3        A    I don't recall asking any questions.

4        Q    Do you recall asking her which employees you  
5        weren't allowed to speak to about Evan?

6        A    No. She just said I couldn't talk about Evan to  
7        any of my co-workers.

8        Q    But that seems like an odd -- To me, that seems  
9        like an odd thing to be told. Were you curious as  
10      to why you weren't allowed to speak to any other  
11      co-workers about Evan?

12      A    No. I just knew that -- I mean, that's what she  
13      had said -- that I couldn't -- It had to go back  
14      with -- It had to go back to do with I couldn't  
15      discuss anything about Evan to anybody.

16      Q    And as we sit here today, you don't know why that  
17      is?

18      A    No. I mean, it just was -- It went along with all  
19      the other changes they needed me to make.

20      Q    Because when you say "change," previously you had  
21      been speaking to your co-workers about Evan.

22      Correct?

23      A    Yes. Specifically, John Busby and I had a  
24      conversation where he even recommended Penfield  
25      Children's Center as a possible treatment for Evan.

1 So yes, it was discussed amongst other people who  
2 would ask me how things were going.

3 Q So John Busby, you already testified, was the  
4 president of Miller Compressing at the time.

5 Right?

6 A Correct.

7 Q But this was specifically related to co-workers.  
8 So were there co-workers within your department  
9 that you were speaking to about Evan?

10 MR. OLSON: Object to form. Could you  
11 read that question back, please?

12 (Record read.)

13 MR. OLSON: If you understand it, go  
14 ahead and answer.

THE WITNESS: They're all co-workers.

16 BY MS. LORENC:

17 Q Were there co-workers within the order processing  
18 department in 2012 that you were speaking to on a  
19 regular basis about Evan?

20 A Yes.

21 Q Other than your sister, were there other co-workers  
22 within the order processing department that you  
23 were speaking to about Evan?

24 A Yes. Matt Chavez. I kept him up-to-date on  
25 everything.

1 Q Other than Matt and your sister, were there other  
2 co-workers that were assigned to desks, so the  
3 other desks within the order processing department,  
4 that you were speaking to frequently about Evan?

5 A Yes. I believe they knew what was going on.

6 Q Would you and your sister talk about Evan at work  
7 on a regular basis?

8 A Yes.

9 Q We talked a little bit about this next bullet point  
10 that you listed, but you said that you believe your  
11 FMLA rights were violated because you couldn't use  
12 your boss to help prioritize your desk. Is that a  
13 correct statement?

14 A Correct.

15 Q What is it about asking your boss to help  
16 prioritize your desk that involved your FMLA  
17 rights?

18 A I don't understand the --

19 Q Well, and I'm trying to understand what  
20 prioritizing your desk and asking your boss to help  
21 you do that -- how that relates to your FMLA  
22 rights. Are you saying it's because you were off  
23 work for two days a week and then when you came  
24 back in, you wanted to know what you should be  
25 working on or what had top priority?

1 A Yes. That's what I -- why I asked him to help me  
2 prioritize my desk is because I was working -- or  
3 because I was not working those two days.

4 Q So in your mind, the two things are linked because  
5 you needed help prioritizing because you were out  
6 two days, but you didn't seek FMLA leave to receive  
7 assistance to prioritize your desk. Correct?

8 A Correct.

9 Q Was that statement made to you during your meeting  
10 with Matt and Sarah or was that statement made  
11 during the phone call?

12 A The phone call.

13 Q And did you have any response to that statement  
14 when it was made to you?

15 A No.

16 Q Did you ask why you weren't allowed to use your  
17 boss anymore to prioritize your desk?

18 A No.

19 Q And when you say "your boss," you're referring to  
20 Matt?

21 A Yeah.

22 Q Did you have a belief as to why you were told you  
23 couldn't use Matt to help prioritize your desk  
24 anymore?

25 A Yes.

1 Q And what was your belief?

2 A My belief was that they -- or that they wanted --  
3 They just wanted me to do it and not have to  
4 interrupt his day, I guess. I mean, they just  
5 wanted me to do as much as I could.

6 Q To complete your job.

7 A Yes.

8 Q And then the last item you mentioned regarding the  
9 way in which FMLA rights were violated is that you  
10 couldn't use OPT? Am I saying that correctly?

11 A Oh, that stands for order processing team member, I  
12 believe. I'm sorry.

13 Q No, that's okay. That was going to be my next  
14 question. "OP team members as backup," and you  
15 said "including Diana." First of all, was that  
16 comment made during the meeting portion or the  
17 phone call portion?

18 A The phone call.

19 Q Okay. And did you ask why you would no longer be  
20 able to use OP team members as backup?

21 A No.

22 Q Before we move on to Diana, you mentioned that  
23 previous to being told this, people would use other  
24 OP team members to help them if they needed someone  
25 on any given day. Correct?

1 A Correct.

2 Q But you needed help as backup twice a week every  
3 week. Correct?

4 MR. OLSON: Object to form.

5 BY MS. LORENC:

6 Q In 2012.

7 MR. OLSON: Object to form.

8 BY MS. LORENC:

9 Q You can answer.

10 A Oh. Incorrect.

11 Q Okay. So tell me when you needed help with backup.

12 A If I was unable to do any of the work that I was  
13 taking home -- Like I would do work on nights and  
14 weekends. If there was -- If I needed help  
15 catching up, I would use somebody for backup, but  
16 typically I came in and picked up the workload, did  
17 it after-hours and did it on the weekends.

18 Q How often in 2012 did you need help from other OP  
19 team members to complete your work?

20 A I don't know.

21 Q Every week?

22 A I don't know. I recall doing most of the work  
23 myself, if not all of it. I was getting it all  
24 done.

25 Q Well, I'm curious as to why this statement would

1 even need to be made unless it was something that  
2 you were frequently doing. So were you often  
3 seeking help from other members of the OTP -- OPT  
4 department, excuse me, to help complete your job  
5 tasks?

6 A No.

7 Q Would you say once a month you would ask others for  
8 help completing your job?

9 A I don't know.

10 Q Were you surprised that this statement was made to  
11 you?

12 A Yes. I was surprised that all of them were made.

13 Q Were you specifically surprised that this statement  
14 was made because it wasn't something you were doing  
15 anyway?

16 A I don't -- Yes.

17 Q Because it's your recollection that you were able  
18 to complete your job.

19 A Yes. It's my recollection that I was able to do  
20 most of it after-hours and on the weekends. I  
21 don't recall needing a regular backup.

22 Q But as part of this conversation, you were going to  
23 be expected to work in the office five days.  
24 Correct?

25 A Right.

1 Q And you were going to be expected to work from 8 to  
2 4. Correct?

3 A Correct.

4 Q So if those two things were true, you probably  
5 wouldn't have needed any backup because you would  
6 have been there during normal business hours and  
7 five days a week. Correct?

8 MR. OLSON: Object to form.

9 BY MS. LORENC:

10 Q You can answer.

11 A Correct.

12 Q I'm sure you've probably already told me this, but  
13 what's Diana's last name, if you recall?

14 A Kasprzyk.

15 Q Okay. Do you know how to spell that?

16 A I believe --

17 MS. BARBIAN: K-a-s-p-r-z-y-k.

18 BY MS. LORENC:

19 Q What department was Diana in, in July of 2012?

20 A Dispatch.

21 Q That's different than the OPT department. Correct?

22 A Order processing, yes. That's different.

23 Q Had you used Diana in the past as backup?

24 A Yes.

25 Q Why use someone in a different department as

1 backup?

2 A It's my understanding that Diana was brought back  
3 into the department specifically to train at the  
4 sales brokerage desk so I could move on. So she  
5 was trained thoroughly, and she was the most recent  
6 person trained at my desk.

7 Q Okay. Let's break that up a little bit. When you  
8 say "so that you could move on," what does that  
9 mean?

10 A They wanted me to learn another desk -- the  
11 non-ferrous desk was my next step.

12 Q Do you recall when you were supposed to make that  
13 move to the new desk?

14 A No. It had been brought up for the last couple  
15 years, me training at that desk, but it just never  
16 worked out because we couldn't find a consistent  
17 backup for the sales brokerage desk. So that's why  
18 they brought Diana onboard, was to take over my  
19 desk, so that I could eventually go to the  
20 non-ferrous desk, because that's the last desk in  
21 the department that I needed to learn.

22 Q And that would have been a promotion to move to the  
23 non-ferrous desk?

24 A Yes.

25 Q When was Diana trained on your desk? Do you

1 recall?

2 A No. I don't remember when she was hired, but it  
3 was when she was hired.

4 Q That she was trained? Okay. So she was trained on  
5 your desk, but was working in a different  
6 department. Is that a fair statement?

7 A Yes.

8 Q Okay. And how often would you use Diana as backup?

9 A I don't know. It would be for, like, vacations.  
10 You know, like, if I would go on vacation or have  
11 more than a couple days off, they would call her  
12 over and she would do my desk, but I don't recall  
13 when I took vacations.

14 Q When Diana would cover your desk, is that because  
15 you would ask her to do it or would someone else  
16 say "Tracy's going to be gone. We need backup"?  
17 Were you in charge of finding your backup or would  
18 someone else do it?

19 A Someone else would do it.

20 Q Okay. So you just know that it was her, but it's  
21 not because you had asked her to be your backup.

22 A Correct.

23 Q Okay. And I'm sure you said this, but what  
24 department was Diana in?

25 A Dispatch.

1 Q Dispatch? I apologize. Do you recall being told  
2 in July of 2012 that dispatch was going to be going  
3 through a reorganization?

4 A No.

5 Q Do you recall being told why you could no longer  
6 use Diana as backup?

7 A No.

8 Q Did you ask why you could no longer use Diana?

9 A No.

10 Q Other than for vacation and things where you had  
11 scheduled to be out, do you recall using Diana to  
12 help you when you weren't able to get your tasks  
13 completed?

14 A No.

15 Q At any point in time between February of 2012, when  
16 you started working from home two days out of the  
17 week, and July of 2012, did you ask Diana to  
18 complete any of your tasks for you?

19 A Not that I recall, unless it was, like, a  
20 scheduled, you know, like I said, day off or  
21 something.

22 Q As part of your job responsibilities, were you  
23 supporting the sales and marketing team when you  
24 were at the sales brokerage desk?

25 A What do you mean, "supporting" them?

1 Q Were you doing the invoices for and entering the  
2 orders and getting payments for the sales and  
3 marketing teams?

4 A That's more like the orders desk duties. They're  
5 the ones that took all their paperwork and inputted  
6 it. I processed the tickets that came from --

7 Q And where did the tickets come from?

8 A The scales or dispatch.

9 Q So when you were on the sales brokerage desk -- And  
10 it's your testimony, I believe, that you were on  
11 the sales brokerage desk when you left the company  
12 in July of 2012. Correct?

13 A Yes.

14 Q Okay. Did you interface with the sales and  
15 marketing team?

16 A Yes. We all did.

17 Q And what were you doing for the sales and marketing  
18 team in July of 2012?

19 A I didn't have any direct duties from them.

20 Q Okay. Your direct duties were from dispatch and  
21 scales, you said?

22 A From the scale, yeah. I got my workload from the  
23 dispatch and the scales.

24 Q What were the work hours of the people in the  
25 dispatch department? If you know.

1 A I don't know their hours.

2 Q Do you know what the work hours were for the people  
3 in the scales department in July of 2012?

4 A No.

5 Q So we've talked about your July 13 meeting. Tell  
6 me what you were told when you went in to the  
7 July 13 meeting other than the bullet points that  
8 we've gone through. Were you told anything else?

9 A In the meeting -- In the actual meeting, not the  
10 phone call?

11 Q Correct. In the actual meeting.

12 A No. In the actual meeting, I was told that I  
13 needed to be in the office Monday through Friday  
14 and that my hours needed to change to 8 to 4 and  
15 that my FMLA only would cover doctors' appointments  
16 and therapy sessions and that they had to be  
17 scheduled at the end of the day so as not to  
18 interfere with work -- or to interfere the least  
19 amount as possible with work.

20 Q You were told that Miller could no longer  
21 accommodate your request for a flexible schedule.  
22 Correct?

23 A Correct.

24 Q And that Miller could no longer accommodate your  
25 request to telecommute. Correct?

1 A I believe that was in the phone call. That part --  
2 that I was no longer able to work from home. Is  
3 that what "telecommute" means?

4 Q Yes. So you think you were just told that they  
5 could no longer accommodate your flexible schedule  
6 during the actual meeting?

7 A Oh. Yeah. They told me I could no longer work  
8 from home, that I had to be in the office Monday  
9 through Friday, and that my hours had to be changed  
10 from 7 to 3 to 8 to 4.

11 Q And they told you that they could no longer  
12 accommodate the flexible schedule because of the  
13 financial strain on the company, or words to that  
14 effect. Correct?

15 MR. OLSON: Object to form.

16 BY MS. LORENC:

17 Q You can answer.

18 MR. OLSON: You can answer.

19 THE WITNESS: No.

20 BY MS. LORENC:

21 Q They didn't tell you anything about what was going  
22 on at the company financially during that July 13  
23 meeting?

24 A No.

25 Q They didn't give you any explanation as to why

1           these changes needed to be made to your schedule?

2   A   They said I needed to work 8 to 4 to be in  
3           accordance to what everybody else in the company  
4           worked. That's what their explanation was.

5   Q   And they didn't give you any explanation as to why.

6   A   No.

7   Q   So you said that they did tell you that you would  
8           be able to continue to use FMLA leave to attend  
9           Evan's doctors' appointments and therapy sessions.

10           Correct?

11   A   Correct.

12   Q   And then I believe you testified that you were  
13           upset about this conversation and that you  
14           subsequently left the meeting. Right?

15   A   Yes.

16   Q   During your phone call with Sarah after the meeting  
17           but also on July 13, did she say to you you could  
18           take the weekend and speak to your mother and  
19           husband and figure out if that change in the  
20           schedule would work for you?

21   A   Yes.

22   Q   I believe you said you then scheduled a time on  
23           Monday, which I think would be July 16, to meet and  
24           discuss your decision. Correct?

25   A   Correct.

1 Q Do you recall when that meeting on the 16th took  
2 place?

3 A No. I believe it was morning, but I'm not sure.

4 Q Okay. And who -- Tell me about that meeting. Who  
5 was in that meeting?

6 A That meeting was with Sarah and Matt.

7 Q The same people that you met with on the 13th.

8 A Yes.

9 Q Okay. And what did you tell them when you got into  
10 that meeting?

11 A I told them that I did not have enough time or that  
12 the weekend was not enough time for me to make all  
13 the changes that they needed from me in order for  
14 me to keep my job.

15 Q Anything else?

16 A There may be more. It's in the interrogatories  
17 that I already wrote up or that are filed.

18 Q As we sit here today, do you remember saying  
19 anything else during that July 16 meeting?

20 A I just -- I think I restated that I didn't  
21 understand how they could not -- how they could not  
22 still allow my FMLA to be able to work from home  
23 two days a week, and I remember asking Sarah how  
24 we're going to deal with unemployment, since I'm  
25 not agreeing that I'm -- that I'm not -- We're not

1           in agreement with how my employment is ending.

2   Q    Okay. So before we get to the employment ending  
3           part, how did you come to the conclusion that your  
4           employment was ending?

5   A    Because they told me if I could not come in to work  
6           Monday through Friday, that the first time I would  
7           miss a day of work, that that would be considered a  
8           voluntary quit.

9   Q    But you hadn't missed a day yet at this point, as  
10           of July 16. Right? You were at work. Correct?

11   A    I was at work for that meeting?

12   Q    Yeah.

13   A    Yes.

14   Q    All right. So they told you that if you were to  
15           miss a day, that that would be grounds for  
16           termination, but you hadn't missed a day yet, and  
17           yet you'd already come to the conclusion that your  
18           employment was ending during that July 16 meeting.  
19           Is that accurate?

20   A    Can you split that up? You're asking like three  
21           questions.

22   Q    Well, I'm trying to understand how you got to the  
23           conclusion during the July 16 meeting that you were  
24           no longer working at Miller, because you hadn't  
25           been terminated. You had come to work on July 16.

1           Right?

2   A   I came for the meeting on July 16.

3   Q   Did you intend on working the rest of your day when  
4        you came in to work on July 16?

5   A   No. We had set up a meeting to discuss whether all  
6        those changes could be made in order for me to  
7        continue working.

8   Q   So when you went in to the meeting, you knew that  
9        it wasn't going to work. You weren't going to be  
10      able to meet their demands, and your time at Miller  
11      was going to be done. Correct?

12                  MR. OLSON: Object to form.

13                  BY MS. LORENC:

14   Q   You can answer.

15                  MR. OLSON: You can answer if you  
16        understand it.

17                  THE WITNESS: Repeat the question,  
18        please.

19                  MS. LORENC: Can you read it back,  
20        please?

21                  (Record read.)

22                  THE WITNESS: Can you rephrase that  
23        question?

24                  BY MS. LORENC:

25   Q   Tell me what your intention was going in to the

1           July 16 meeting.

2       A    To tell them that I couldn't make all those changes  
3           over the weekend.

4       Q    Did you intend, going in to that meeting, to  
5           continue working at Miller Compressing?

6       A    I wanted to.

7       Q    But you wanted to keep your prior schedule.

8       A    Yes.

9       Q    Correct?

10      A    I asked Sarah what would happen if I would just --  
11           if I could just continue working like that for a  
12           little while longer until I could work something  
13           out, and that's when she stated that the first time  
14           that I would miss a day of work, they would  
15           consider that a voluntary quit if I didn't have  
16           daycare.

17      Q    Did you think about, before you went to that  
18           meeting on July 16, if they said it was not an  
19           option to continue working from home two days out  
20           of the week, what that would mean for you?

21      A    Can you say that again, please?

22      Q    When you left -- Strike that. On July 13, you were  
23           told that you needed to be in the office five days  
24           out of the week and that you needed to work from 8  
25           to 4. My understanding is, when you went in to the

1 meeting on July 16, you were effectively saying to  
2 them "I can't do that. I can't work in the office  
3 five days out of the week, and I can't work from 8  
4 do 4." Is that a correct statement?

5 A Yes.

6 Q Okay. So considering the employer, Miller, was  
7 saying, "We need you to do Monday through Friday, 8  
8 to 4," and you were saying, "No, I can't do that,"  
9 what was your understanding of what was going to  
10 happen?

11 A That I had the weekend to try to find daycare for  
12 Evan for five days a week and also change my hours.  
13 That was my understanding, is that we were going to  
14 discuss it on Monday then whether or not I could --  
15 whether or not I found daycare for him.

16 Q Okay. I believe you already testified that you  
17 didn't or you couldn't, so when you went to the  
18 meeting on July 16, knowing that you weren't going  
19 to be able to meet their requirements, what was  
20 your understanding of what would occur?

21 A That I'd be terminated because I couldn't come to  
22 work.

23 Q But you came to work that day. So on -- In that  
24 meeting, were you expecting to no longer work for  
25 Miller after that conversation?

1 A Yes.

2 Q Do you recall being told either on July 13 or on  
3 July 16 that if you could start working five days a  
4 week and if you could work from 8 to 4, that they  
5 wanted you to keep working at Miller Compressing?

6 A Say it again.

7 Q Do you remember being told either on July 13,  
8 whether it was during your actual meeting or on the  
9 phone with Sarah or during that July 16 meeting  
10 that if you could meet their directive to work five  
11 days out of the week and to work from 8 to 4, that  
12 they wanted you to stay at Miller Compressing?

13 A I don't recall that specifically being said, but  
14 that's implied by them saying they wanted me to  
15 come back to work five days a week.

16 Q They didn't want to terminate you. Correct?

17 MR. OLSON: Object to form.

18 BY MS. LORENC:

19 Q You can answer.

20 MR. OLSON: You're asking what they  
21 wanted? Okay. I object to form, calls for  
22 speculation, state of mind of a third person. You  
23 can answer.

24 THE WITNESS: No. I don't know what they  
25 wanted.

1 BY MS. LORENC:

2 Q It was your understanding that they didn't want to  
3 terminate you. They just wanted you to work in the  
4 office five days out of the week. That was your  
5 understanding. Correct?

6 MR. OLSON: Object to form. Same  
7 objection. Calls for speculation.

8 MS. LORENC: I'm asking what her  
9 understanding was.

10 BY MS. LORENC:

11 Q You can answer.

12 A My understanding was -- is that they were telling  
13 me my FMLA did not cover me working from home and  
14 that they were taking away my right to work from  
15 home two days a week, forcing me to come in five  
16 days a week.

17 Q Because they wanted to retain you. Correct?

18 MR. OLSON: Object to form. Same  
19 objection --

20 BY MS. LORENC:

21 Q Well --

22 MR. OLSON: -- as to what they wanted.  
23 That is -- goes to intent of a third person. You  
24 can answer if you know.

25 THE WITNESS: I don't know what they

1                   wanted.

2 BY MS. LORENC:

3 Q     When you had your meeting on July 13, they didn't  
4       fire you. Correct?

5 A     No.

6 Q     They said your job was changing and you needed to  
7       be in the office five days out of the week.  
8       Correct?

9 A     No. They never said my job was changing.

10 Q    They said your job schedule was changing, and they  
11      needed you in the office five days out of the week.  
12      Correct?

13 A     Yes.

14 Q    At no point during that July 13 meeting did they  
15      say "We are terminating you." Right?

16                   MR. OLSON: Object to form.

17 BY MS. LORENC:

18 Q     You can answer.

19 A     No, they did not specifically say they were  
20      terminating me.

21 Q    And on July 16, they didn't say "You are  
22      terminated." Did they?

23                   MR. OLSON: Object to form.

24 BY MS. LORENC:

25 Q     You can answer.

1 A No, they did not specifically use those words that  
2 they were terminating me. They were -- It was  
3 implied that if I did not come to work the rest of  
4 the two days a week, that they did not have a job  
5 for me.

6 Q How did the July 16 meeting end?

7 A July 16 -- That was the Monday?

8 Q The Monday, yes.

9 A It was a quick meeting -- very quick. It ended  
10 with us discussing how to go about unemployment. I  
11 didn't know -- I never lost a job before like that,  
12 so I didn't know what to do.

13 Q So you came in to the meeting and told them that  
14 you weren't able to find child care for those two  
15 days. Did you tell them anything else?

16 A I don't recall. If I did, it's in the  
17 interrogatories that have been submitted.

18 Q Do you recall either Sarah or Matt saying anything  
19 else to you during that July 16 meeting?

20 A No. I know that there's a written account of it in  
21 the interrogatories, but I don't specifically -- I  
22 remember going in there to tell them that I could  
23 not change all those things they needed me to  
24 change over the weekend. I could not make all  
25 those changes that quickly.

1 Q But you don't -- As you sit here at this moment,  
2 you don't recall what either Sarah or Matt's  
3 response was to that?

4 A No, I do not.

5 Q Do you recall anything else about that July 16  
6 meeting?

7 A Yes. I recall asking how to apply for unemployment  
8 and how we were going to work that out.

9 Q And did they have a response? Did either Sarah or  
10 Matt have a response to that?

11 A Yeah. Sarah told me that Miller Compressing was  
12 not going to contest the unemployment, and I said,  
13 "Well, how do we word it?" Because I wasn't -- I  
14 didn't quit, and they weren't saying they were  
15 firing me. We had a disagreement. I kept -- I  
16 reassured that I was not quitting, so I didn't  
17 know what to write on it.

18 Q Did she reassert that they were not firing you?

19 A No.

20 Q But she had -- It was clear to you that there was a  
21 disagreement as to what was occurring at that time.

22 A No. I wasn't in disagreement.

23 Q But you previously -- Well, strike that. Anything  
24 else you recall from that July 16 meeting?

25 A Yes. Sarah told me to write on the unemployment

1           form that Miller could no longer accommodate my  
2           schedule or that my flexible schedule was no longer  
3           being able to be accommodated.

4       Q     Okay. Anything else?

5       A     Not that I recall, no.

6       Q     What other Miller employees had flexible hours or  
7           were allowed to -- Well, strike that. Let's just  
8           start with flexible hours -- prior to or during  
9           July 2012?

10      A     I don't know.

11      Q     Are you aware of any other Miller employees that  
12           were allowed to work from home during July of 2012?

13      A     Yes. There were -- Yes.

14      Q     Can you give me their names?

15      A     Within my department, Sue Hejdak and Kim Noonan  
16           frequently took work home to get things done on the  
17           weekend.

18      Q     Sue and Kim, did you say?

19      A     Um-hum.

20      Q     Yes?

21      A     Yes.

22      Q     So they were allowed to take work home, but they  
23           worked in the office five days a week. Correct?

24      A     Yes.

25      Q     And they worked from 8 to 4. Correct?

1 A I don't know what their exact hours were.

2 Q So when you say they were allowed to work from  
3 home, that was in addition to working their normal  
4 five days in the office. Correct?

5 A Yes.

6 Q Are you aware of any Miller employees who had their  
7 flexible hours revoked in July of 2012 other than  
8 you?

9 A No.

10 Q But you weren't aware of who did have flexible  
11 hours prior to July of 2012. Correct?

12 A No. I'm not aware if anybody had flexible hours,  
13 and if they did, I had no idea if they were revoked  
14 or not.

15 MS. LORENC: Okay. I want to just take a  
16 quick break to speak to my client, and then I think  
17 we're almost done.

18 MR. OLSON: Okay.

19 (A break was taken.)

20 MS. LORENC: I don't think I have any  
21 further questions. Do you want to reserve for  
22 signature?

23 MR. OLSON: Yes.

24 MS. LORENC: All right. Thank you.

25 (Proceedings concluded at 12:41 p.m.)

1 STATE OF WISCONSIN      )  
2                              ) SS:  
COUNTY OF MILWAUKEE    )

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5                              I, KARA D. SHAWHAN, a Certified Realtime  
6 Reporter, Registered Merit Reporter and Notary Public in  
7 and for the State of Wisconsin, do hereby certify that  
8 the above deposition of TRACY L. WINK was recorded by me  
9 on November 21, 2014, and reduced to writing under my  
10 personal direction.

11                             I further certify that I am not a  
12 relative or employee or attorney or counsel of any of  
13 the parties, or a relative or employee of such attorney  
14 or counsel, or financially interested directly or  
15 indirectly in this action.

16                             In witness whereof I have hereunder set  
17 my hand and affixed my seal of office at Milwaukee,  
18 Wisconsin, this 25th day of November, 2014.

19

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21

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Notary Public  
In and for the State of Wisconsin

22

23

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25

My Commission Expires: August 29, 2017.

1 STATE OF WISCONSIN      )  
2                              ) SS:  
COUNTY OF MILWAUKEE    )

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4

5                             I, TRACY L. WINK, do hereby certify that I  
6 have read the foregoing transcript of proceedings, taken  
7 on November 21, 2014, at Brown & Jones Reporting, Inc.,  
8 735 North Water Street, Milwaukee, Wisconsin, and the  
9 same is true and correct, except for the list of  
10 corrections noted on the annexed page.

11

12

13                             Dated at \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

14

15

16

17                             \_\_\_\_\_  
TRACY L. WINK

18

19                             Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2014  
20

21

22

Notary Public  
23

24

My Commission Expires:  
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